APPEAL NO. 021851
FILED SEPTEMBER 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 22, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, and that she had disability beginning on February 2, 2002, and continuing through the date of the CCH. The appellant (carrier) appeals the occupational disease injury and disability determinations, and argues that the hearing officer failed to make a finding of fact on whether the disease is indigenous to the work of the claimant or whether the disease is present to an increased degree in the work of the claimant as compared with employment generally. The file does not contain a response from the claimant.

DECISION

Affirmed.

Section 401.011(34) provides that an occupational disease means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

The carrier cites Texas Workers' Compensation Commission Appeal No. 961832, decided October 31, 1996, to support its contention that the hearing officer did not make a required finding of fact concerning whether the occupational disease is indigenous to the work of the claimant or present to an increased degree in the work of the claimant as compared with employment generally. We disagree. In Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996, the Appeals Panel held that "it is not required that it be proven the disease is inherent in or present in a greater degree when the evidence sufficiently proves that repetitive traumatic activities occurred on the job and there is a causal link between the activities and the harm or injury." The carrier also cites Texas Workers' Compensation Commission Appeal No. 960503, decided April 25, 1996. However, that case deals with the need for a finding concerning the aggravation of an injury and is distinguishable. The hearing officer noted that the claimant "used both hands to perform these duties and that it would take her approximately five and one-half hours to sew all of the bundles required for one day." The hearing officer explains that the "Claimant has shown that her job duties were of such a repetitive and particular nature as to cause the symptoms she began to experience in _____." In addition, the hearing officer was persuaded by the claimant's testimony and the medical records that she "sustained an injury to both upper extremities as the result of the repetitive activities she performed

during the course and scope of her employment." The hearing officer could, and apparently did, find that the claimant established a casual link between the claimed occupational disease injury and her work activities.

There was conflicting evidence presented on the factual questions of whether the claimant had a compensable occupational disease injury and whether there was disability. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations because we do not find them to be so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **GRAPHICS ARTS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.

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Veronica Lopez
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

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Philip F. O'Neill
Appeals Judge